

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

JAMES A. WRIGHT, in his capacity as)	
EXECUTIVE INSPECTOR GENERAL for)	
AGENCIES OF THE GOVERNOR, State)	
of Illinois,)	
Petitioner,)	
)	
v.)	No. 08-EEC-009
)	
JILL MORGENTHALER,)	
Respondent.)	

DECISION

This cause is before the Executive Ethics Commission ("Commission") for purposes of considering petitioner's motion for summary judgment. This decision will also serve as the Commission's final administrative decision in this matter.

Petitioner filed the present petition for leave to file complaint ("petition") and verified complaint with the Commission on March 5, 2008. Petitioner's affidavit of service, filed March 20, 2008, indicates that a copy of the petition and complaint was served on respondent on March 18, 2008.

Respondent filed no answer to the petition and the Commission granted the petition on May 15, 2008. Respondent agreed to waive her right to an administrative hearing and agreed to resolve this matter by way of a joint stipulation of facts, petitioner's motion for summary judgment, and her response to that motion.

In accordance with this agreement, petitioner filed the present motion for summary judgment with a stipulation of facts on July 25, 2008. Respondent filed her response on July 31, 2008.

Petitioner is represented by Assistant Attorney General Matthew Thomas Klein. Respondent is represented by Tom Schanzle-Haskins.

FINDINGS OF FACT

A complete copy the record of proceedings has been reviewed by all members of the Executive Ethics Commission. Based upon this record, the Commission makes the following findings of fact:

1. Respondent Jill Morgenthaler served as Deputy Chief of Staff of Public Safety for the State of Illinois from December 2005 until November 2007.
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2. On October 25, 2006, Morgenthaler was contacted by a member of the Sangamon County Democratic Party at her home before work hours. The purpose of the contact was to identify a veteran who could serve as a spokesperson in a radio commercial for Governor Blagojevich's reelection campaign.
3. That afternoon, during work hours, Morgenthaler went to the cubicle of another State employee to inquire about the location of a third State employee, whom she knew to be a veteran and whom she believed to be a good candidate for appearing in the radio commercial.
4. The employee told Morgenthaler that he was on the telephone with the employee she wanted to contact. Morgenthaler then took the telephone from the employee, telling him something to the effect that he should forget that he heard this conversation.
5. During the telephone discussion with the third employee, Morgenthaler asked him whether he would participate in the radio commercial and obtained his contact information to forward to the advertising company.
6. The stipulation of facts indicates that Morgenthaler knew that the telephone conversation should not take place during work time and on State equipment.
7. The employee/veteran contacted by Morgenthaler did not participate in the radio commercial.

CONCLUSIONS OF LAW

1. Respondent Jill Morgenthaler was at all times relevant to this complaint a State employee, as "employee" is defined in the State Officials and Employees Ethics Act ("Act") to include regular employees and appointees. 5 ILCS 430/1-5.
2. The Executive Ethics Commission has jurisdiction over respondent in the matter of her alleged prohibited political activities. 5 ILCS 430/5-15(a)
3. Section 5-15(a) of the Act provides "State employees shall not intentionally perform any prohibited political activity during any compensated time (other than vacation, personal or compensatory time off). State employees shall not intentionally misappropriate any State property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective office or any political organization."
4. Prohibited political activity includes "[m]anaging or working on a campaign for elective office or for or against any referendum question." 5 ILCS 430/1-5.
5. On October 25, 2006 Jill Morgenthaler intentionally performed prohibited political activity during compensated time when she spoke to another State employee about serving as a spokesperson in a radio commercial for Governor Blagojevich's reelection campaign.

6. On October 25, 2006 Jill Morgenthaler intentionally misappropriated State property or resources by engaging in prohibited political activity for the benefit of any campaign for elective office or any political organization when she used a State telephone to talk to another State employee about serving as a spokesperson in a radio commercial for Governor Blagojevich's reelection campaign.
7. Respondent has violated Section 5-15(a) of the State Officials and Employees Ethics Act. 5 ILCS 430/5-15(a).
8. There is no genuine issue of material fact that respondent intentionally performed prohibited political activity during compensated time.
9. There is no genuine issue of material fact that respondent intentionally misappropriated State property or resources by engaging in prohibited political activity for the benefit of a campaign for elective office or a political organization.
10. Petitioner is entitled to summary judgment as a matter of law.
11. The Executive Ethics Commission may levy an administrative fine of up to \$5,000 for a violation of the State Officials and Employees Ethics Act. 5 ILCS 430/50-5(e).

STANDARD OF REVIEW

Granting summary disposition in an administrative proceeding is comparable to granting summary judgment under section 2-1005 of the Code of Civil Procedure. *Bloom Tp. High School v. Illinois Commerce Com'n* (1999), 309 Ill. App. 3d 163, 177; 242 Ill. Dec. 892, 903; *Cano v. Village of Dolton* (1993), 250 Ill.App.3d 130, 138; 189 Ill.Dec. 883, 620 N.E.2d 1200. Because of the similarities in the two procedures, it is appropriate to apply the standards applicable to granting summary judgment under section 2-1005 when reviewing a summary determination entered by an administrative agency. See *Cano*, 250 Ill.App.3d at 138, 189 Ill.Dec. 883, 620 N.E.2d 1200.

Summary judgment is appropriate only where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c)

In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts. The use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit. However, it is a drastic means of disposing of litigation and, therefore, should be allowed only when the right of the

moving party is clear and free from doubt. *Adams v. Northern Illinois Gas Company* (2004), 211 Ill. 2d 32, 43; 284 Ill. Dec. 302, 310.

ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes that she engaged in prohibited political activity during compensated time and misappropriated State property and resources while doing so. In her response to the motion for summary judgment, respondent acknowledges that a violation has occurred. This acknowledgment leaves to the Commission the matter of an appropriate sanction. Petitioner seeks a fine of "up to \$5,000.00 per violation of the Act" and respondent suggests a fine of \$250.00.

The Ethics Act does not provide any aggravating or mitigating factors for the Commission to consider. Also, since this is the first prohibited political activity case to reach a conclusion before the Executive Ethics Commission and therefore the first opportunity for the Commission to consider levying an administrative fine, the Commission has no precedent to guide it.

The parties were afforded an opportunity to present evidence and argument concerning an appropriate sanction at a hearing. Both parties declined and preferred to rely on written evidence and argument in the summary judgment motion and response. Respondent attached an affidavit to her response in which she gave some personal background and a more detailed explanation of the events surrounding the violation.

In the affidavit, respondent notes that she served 30 years with the U.S. Army and Army Reserves, retiring with the rank of Colonel. She was awarded the Bronze Star and the Legion of Merit for her service. On October 26, 2006 respondent did not intend to speak to the employee during compensated time about appearing in the campaign commercial. When she learned that the employee was on the telephone, it became convenient for her to speak to him at that time. She knew it was wrong and describes the comment "You never heard this conversation" as a "tongue-in-cheek" comment. She describes the telephone conversation as very brief. Respondent also states that she and her husband are currently unemployed.

Petitioner notes that respondent's high-ranking position at the Governor's office and the fact that she knew what she was doing was wrong when she did it should be considered aggravating factors. It is true that respondent was in a position of authority and had the responsibility to set a good example for her employees. Respondent acknowledges that she knew discussing the campaign commercial at that time was wrong and that she exercised poor judgment.

Respondent appears to have owned up to her actions and cooperated in the investigation. Though she admits that she knew what she did was wrong when she did it, the circumstances of the violation suggest that this was a momentary lapse in judgment. There is no evidence that the violation was premeditated or part of any other scheme to engage in prohibited political activity at the workplace.

WHEREFORE, for the foregoing reasons, petitioner's motion for summary judgment is granted. The Commission levies an administrative fine of \$500.00 against Respondent Jill Morgenthaler for violation of 5 ILCS 430/5-15(a), prohibited political activities. This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: August 14, 2008